

House Engrossed

State of Arizona  
House of Representatives  
Forty-fifth Legislature  
First Regular Session  
2001

CHAPTER 94

# HOUSE BILL 2289

AN ACT

AMENDING SECTIONS 13-3501 AND 13-3506, ARIZONA REVISED STATUTES; AMENDING TITLE 13, CHAPTER 35, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-3506.01; RELATING TO OBSCENITY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 further inspection or inquiry of that which is reasonably susceptible to  
2 examination by the defendant both:

3 (a) That the item contains, depicts or describes nudity, sexual  
4 activity, sexual conduct, sexual excitement or sadomasochistic abuse,  
5 whichever is applicable, whether or not there is actual knowledge of the  
6 specific contents thereof. This knowledge can be proven by direct or  
7 circumstantial evidence, or both.

8 (b) If relevant to a prosecution for violating section 13-3506,  
9 13-3506.01 or 13-3507, the age of the minor, provided that an honest mistake  
10 shall constitute an excuse from liability under this chapter if the defendant  
11 made a reasonable bona fide attempt to ascertain the true age of such minor.

12 4. "Nudity" means the showing of the human male or female genitals,  
13 pubic area or buttocks with less than a full opaque covering, or the showing  
14 of the female breast with less than a fully opaque covering of any portion  
15 thereof below the top of the nipple, or the depiction of covered male  
16 genitals in a discernibly turgid state.

17 5. "Sadomasochistic abuse" means flagellation or torture by or upon  
18 a person clad in undergarments, a mask or bizarre costume, or the condition  
19 of being fettered, bound or otherwise physically restrained on the part of  
20 one so clothed, for the purpose or in the context of sexual gratification or  
21 abuse.

22 6. "Sexual activity" means:

23 (a) Patently offensive representations or descriptions of ultimate  
24 sexual acts, normal or perverted, actual or simulated.

25 (b) Patently offensive representations or descriptions of  
26 masturbation, excretory functions, sadomasochistic abuse and lewd exhibition  
27 of the genitals.

28 7. "Sexual conduct" means acts of masturbation, homosexuality, sexual  
29 intercourse, or physical contact with a person's clothed or unclothed  
30 genitals, pubic area, buttocks or, if such person is a female, breast.

31 8. "Sexual excitement" means the condition of human male or female  
32 genitals when in a state of sexual stimulation or arousal.

33 9. "Ultimate sexual acts" means sexual intercourse, vaginal or anal,  
34 fellatio, cunnilingus, bestiality or sodomy. A sexual act is simulated when  
35 it depicts explicit sexual activity which gives the appearance of  
36 consummation of ultimate sexual acts.

37 Sec. 2. Section 13-3506, Arizona Revised Statutes, is amended to read:

38 13-3506. Furnishing harmful items to minors; applicability;  
39 classification

40 A. It is unlawful for any person, with knowledge of the character of  
41 the item involved, to recklessly transmit, furnish, present, provide, make  
42 available, give, lend, show, advertise, ~~offer~~ or distribute to minors any  
43 item that is harmful to minors.

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 13-3501, Arizona Revised Statutes, is amended to  
3 read:

4 13-3501. Definitions

5 In this chapter, unless the context otherwise requires:

6 1. "Harmful to minors" means that quality of any description or  
7 representation, in whatever form, of nudity, sexual activity, sexual conduct,  
8 sexual excitement, or sadomasochistic abuse, when both:

9 (a) To the average adult applying contemporary state standards with  
10 respect to what is suitable for minors, it both:

11 (i) Appeals to the prurient interest, when taken as a whole. In order  
12 for an item as a whole to be found or intended to have an appeal to the  
13 prurient interest, it is not necessary that the item be successful in  
14 arousing or exciting any particular form of prurient interest either in the  
15 hypothetical average person, in a member of its intended and probable  
16 recipient group or in the trier of fact.

17 (ii) Portrays the description or representation in a patently  
18 offensive way.

19 (b) Taken as a whole does not have serious literary, artistic,  
20 political, or scientific value for minors.

21 2. "Item" means any material or performance which depicts or describes  
22 sexual activity and includes any book, leaflet, pamphlet, magazine, booklet,  
23 picture, drawing, photograph, film, negative, slide, motion picture, figure,  
24 object, article, novelty device, recording, transcription, live or recorded  
25 telephone message or other similar items whether tangible or intangible and  
26 including any performance, exhibition, transmission or dissemination of any  
27 of the above. An item also includes a live performance or exhibition which  
28 depicts sexual activity to the public or an audience of one or more  
29 persons. An item is obscene within the meaning of this chapter when all of  
30 the following apply:

31 (a) The average person, applying contemporary state standards, would  
32 find that the item, taken as a whole, appeals to the prurient interest. In  
33 order for an item as a whole to be found or intended to have an appeal to the  
34 prurient interest, it is not necessary that the item be successful in  
35 arousing or exciting any particular form of prurient interest either in the  
36 hypothetical average person, in a member of its intended and probable  
37 recipient group or in the trier of fact.

38 (b) The average person, applying contemporary state standards, would  
39 find that the item depicts or describes, in a patently offensive way, sexual  
40 activity as that term is described in this section.

41 (c) The item, taken as a whole, lacks serious literary, artistic,  
42 political or scientific value.

43 3. "Knowledge of the character" means having general knowledge or  
44 awareness, or reason to know, or a belief or ground for belief which warrants

1       ~~B. In an action for a violation of this section, proof of any of the~~  
2 ~~following may give rise to an inference that the person knew or should have~~  
3 ~~known that the recipient of an advertisement or offer was a minor:~~

4       ~~1. The name, account, profile, web page or address of the recipient~~  
5 ~~contained indicia that the recipient is a minor.~~

6       ~~2. The recipient or another person previously notified the person by~~  
7 ~~any reasonable means that the recipient is a minor.~~

8       ~~3. The recipient's electronic mail or web page contains indicia that~~  
9 ~~the address or domain name is the property of, or that the visual depiction~~  
10 ~~ultimately will be stored at, a school as defined in section 13-609.~~

11       B. THIS SECTION DOES NOT APPLY TO THE TRANSMISSION OR SENDING OF ITEMS  
12 OVER THE INTERNET.

13       C. A violation of this section is a class 4 felony.

14       Sec. 3. Title 13, chapter 35, Arizona Revised Statutes, is amended by  
15 adding section 13-3506.01, to read:

16       13-3506.01. Furnishing harmful items to minors; internet  
17 activity; classification

18       A. IT IS UNLAWFUL FOR ANY PERSON, WITH KNOWLEDGE OF THE CHARACTER OF  
19 THE ITEM INVOLVED, TO INTENTIONALLY OR KNOWINGLY TRANSMIT OR SEND OVER THE  
20 INTERNET AN ITEM TO A MINOR THAT IS HARMFUL TO MINORS WHEN THE PERSON HAS  
21 KNOWLEDGE OR REASON TO KNOW AT THE TIME OF THE TRANSMISSION THAT A MINOR IN  
22 THIS STATE WILL RECEIVE THE ITEM.

23       B. IT IS UNLAWFUL FOR ANY PERSON IN THIS STATE, WITH KNOWLEDGE OF THE  
24 CHARACTER OF THE ITEM INVOLVED, TO INTENTIONALLY OR KNOWINGLY TRANSMIT OR  
25 SEND OVER THE INTERNET AN ITEM TO A MINOR THAT IS HARMFUL TO MINORS WHEN THE  
26 PERSON HAS KNOWLEDGE OR REASON TO KNOW AT THE TIME OF THE TRANSMISSION THAT  
27 A MINOR WILL RECEIVE THE ITEM.

28       C. POSTING MATERIAL FOR READING OR VIEWING ON AN INTERNET WEB SITE  
29 DOES NOT CONSTITUTE THE ACT OF TRANSMITTING OR SENDING AN ITEM OVER THE  
30 INTERNET.

31       D. IN AN ACTION FOR A VIOLATION OF THIS SECTION, PROOF OF ANY OF THE  
32 FOLLOWING MAY GIVE RISE TO AN INFERENCE THAT THE PERSON KNEW OR SHOULD HAVE  
33 KNOWN THAT THE RECIPIENT OF A TRANSMISSION WAS A MINOR:

34       1. THE NAME, ACCOUNT, PROFILE, WEB PAGE OR ADDRESS OF THE RECIPIENT  
35 CONTAINED INDICIA THAT THE RECIPIENT IS A MINOR.

36       2. THE RECIPIENT OR ANOTHER PERSON PREVIOUSLY NOTIFIED THE PERSON BY  
37 ANY REASONABLE MEANS THAT THE RECIPIENT IS A MINOR.

38       3. THE RECIPIENT'S ELECTRONIC MAIL OR WEB PAGE CONTAINS INDICIA THAT  
39 THE ADDRESS OR DOMAIN NAME IS THE PROPERTY OF, OR THAT THE VISUAL DEPICTION  
40 ULTIMATELY WILL BE STORED AT, A SCHOOL AS DEFINED IN SECTION 13-609.

41       E. IT IS NOT A DEFENSE TO A PROSECUTION FOR A VIOLATION OF THIS  
42 SECTION THAT THE RECIPIENT OF THE TRANSMISSION WAS A PEACE OFFICER POSING AS  
43 A MINOR.

44       F. A VIOLATION OF THIS SECTION IS A CLASS 4 FELONY.


APPROVED BY THE GOVERNOR APRIL 11, 2001.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 12, 2001.

Passed the House February 27, 2001,

by the following vote: 60 Ayes,

0 Nays, 0 Not Voting


  
Speaker of the House

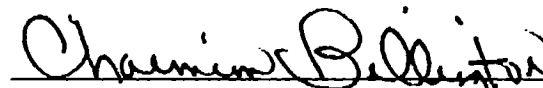
  
Chief Clerk of the House

Passed the Senate April 4, 2001,

by the following vote: 30 Ayes,

0 Nays, 0 Not Voting

  
President of the Senate

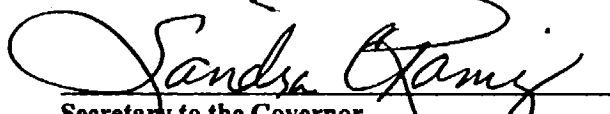
  
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill was received by the Governor this

5 day of April, 2001,

at 1:56 o'clock P M.

  
Secretary to the Governor

Approved this 11 day of

April, 2001,

at 2:43 o'clock P M.

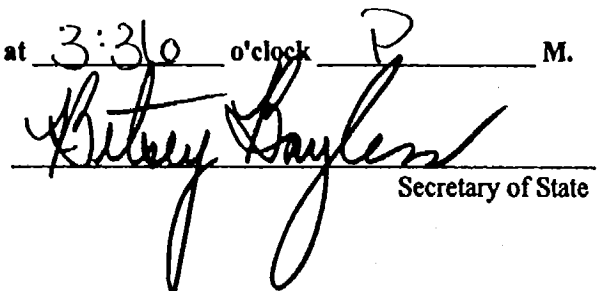
  
Governor of Arizona

H.B. 2289

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State  
this 12 day of April, 2001

at 3:36 o'clock P M.

  
Secretary of State